

27. The product of claim 25 wherein the tear-resistant laminate has an ultimate force to break of greater than 3000 g/in in said transverse direction.

28. The product of claim 25 wherein the tear-resistant laminate has an ultimate force to break of greater than 4000 g/in in said transverse direction.

29. The product of claim 25 wherein the elastic polymeric film has a dart impact value of at least 400 g.

#### REMARKS

Claims 1-17 and 25-29 are pending in the application. Claims 18-24 have been canceled in accordance with the response to restriction requirement filed November 8, 2001. Claims 25-29 are newly added. Claims 7 and 8 are rejected under 35 U.S.C. § 112, first paragraph. Claims 1-3 and 7-17 are rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over Haffner, et. al. (U.S. Patent No. 5,789,065). Claims 1, 2, 5, 6, 11, 13 and 14 are rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as being obvious over Austin, et. al. (U.S. Patent No. 5,543,206). Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Haffner, et. al. or Austin, et. al. in view of Shiba, et. al. (U.S. Patent No. 4,804,378). Favorable reconsideration of this Application in light of the remarks herein is respectfully requested.

*Claim Rejections - 35 U.S.C. § 112*

Claims 7 and 8 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, claims 7 and 8 are rejected because each refer to a metallocene-based low density polyethylene film being elastic, and "[t]o the Examiner's knowledge, polyethylene film is non-elastic."

Applicant submits that the subject matter of claims 7 and 8 is described in the specification in such a way as to enable one skilled in the art to make and use the invention, because it is known in the art that **metallocene-based** polyethylene is elastic and not merely extensible. For example, Haffner refers to a metallocene-based polyethylene film as being elastic at column 6, lines 49-63, wherein Haffner states "Elastomeric thermoplastic polymer useful in the practice of this invention as the elastic layer may be . . . metallocene-catalyzed ethylene-(butene or hexene or octene) copolymers." Therefore, claims 7 and 8 are submitted as being in condition for allowance.

***Claim Rejections - 35 U.S.C. § 102/103***

Claims 1-3 and 7-17 are rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over Haffner et. al. (U.S. Patent No. 5,789,065). Independent claim 1 is drawn to a tear-resistant laminate comprising an elastic polymeric film, a first nonwoven web bonded to the top surface of the elastic film and a second nonwoven web bonded to the bottom of the elastic film. Claim 1 requires the laminate to have an ultimate force to break of at least 3000 g/in in the transverse direction.

While Haffner does not disclose that its laminate has an ultimate force to break of at least 3000 g/in as required by claim 1, claim 1 is rejected based on an assumption that the ultimate force to break would be inherent to the laminate since the chemical and structural limitations of the invention are met. This conclusion, however, fails to take into account how the processing described in Haffner affects the strength of the laminate.

Haffner teaches "[a]n important advance of the present invention over the prior art is the lamination of the fabric to the elastic sheet, followed by necking under elevated temperature" (col. 12, lines 48-51). Haffner thus advocates consolidating the nonwoven webs by necking the entire laminate, including the elastic film. Necking the laminate subjects the elastic film to strain that it would not encounter if the nonwoven webs were necked prior to assembly of the laminate such as in the present invention. The strain induced by necking the laminate orients the polymer chains of the elastic film in the direction of the strain (i.e. the machine direction). Orienting the polymer chains reduces the elasticity and strength of the elastic film in a direction transverse to the direction of the

strain (i.e. the transverse direction). Because the elastic layer in Haffner has been oriented, the laminate is weaker in the transverse direction than a laminate that has not been strained and oriented, for example, the laminate of the present invention. In other words, despite having the same chemical and structural limitations as the laminate of the invention, the laminate of Haffner would be weaker in the transverse direction.

Claim 1 requires that the laminate have an ultimate force to break of at least 3000 g/in in the transverse direction. Because the post-lamination necking reduces the strength of the Haffner laminate, it is not inherent that the Haffner laminate would meet the same ultimate force to break limitation in the transverse direction as the laminate of the present invention. Thus, the Examiner has not shown that the Haffner laminate meets the ultimate force to break of at least 3000 g/in required by claim 1. Accordingly, Haffner does not disclose each and every element of claim 1, and claim 1 is not anticipated.

Because Haffner stresses the importance of the post lamination necking, it would not be obvious from the teachings of Haffner to provide a laminate that had not been necked and thereby weakened. Accordingly, claim 1 would not be obvious in view of Haffner.

Therefore, as claim 1 is neither anticipated nor obvious in view of Haffner, Applicant respectfully submits claim 1 as allowable.

Claims 2, 3 and 7-17 depend from independent claim 1 adding further limitations thereto, and are respectfully submitted as allowable for at least the same reasons as claim 1.

Claims 1, 2, 5, 6, 11, 13 and 14 are rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as being obvious over Austin et. al. (U.S. Patent No.

5,543,206). Independent claim 1 requires "an elastic polymeric film." Austin does not disclose an elastic polymeric film, but rather discloses an "extensible web" (col. 1, line 61). There is no teaching or suggestion in Austin to provide an elastic rather than merely extensible film. Thus, Austin does not disclose each and every limitation of claim 1, and claim 1 is respectfully submitted as allowable.

Further, claim 1 requires that the laminate have an ultimate force to break of at least 3000 g/in in the transverse direction. As above, claim 1 is rejected on the assumption that the limitation of an ultimate force to break of at least 3000 g/in in the transverse direction is inherent in Austin, because the laminate of Austin has a similar chemical and structural configuration to the laminate of the invention. Like Haffner, Austin teaches necking the laminate (col. 5, lines 42-53) rather than necking just the nonwoven layers prior to lamination. Such post lamination necking orients the polymer chains in the elastic film layer in the machine direction, thus decreasing the strength of the elastic film layer in the transverse direction. Because of the post-lamination necking, it is not inherent that the Austin laminate would meet the same ultimate force to break limitation in the transverse direction as the laminate of the present invention. Thus, the Examiner has not shown that the Austin laminate meets the ultimate force to break of at least 3000 g/in required by claim 1. Accordingly, for this further reason claim 1 is not anticipated.

Austin specifically teaches that the layers should be assembled in a "relaxed state" (col. 5, lines 15-16) and then the entire composite necked (col. 5, lines 42-44), thus it would not be obvious from the teachings of Austin to provide a laminate that had not been necked and thereby weakened. Accordingly, claim 1 would not be obvious in view of Austin.

Therefore, as claim 1 is neither anticipated nor obvious in light of Austin, Applicant respectfully submits claim 1 as allowable.

Claims 2, 5, 6, 11, 13, and 14 depend from independent claim 1 adding further limitations thereto, and are respectfully submitted as allowable for at least the same reasons as claim 1.

***Claim Rejections - 35 U.S.C. § 103***

Claim 4 is rejected under 35 U.S.C. § 103(a) as being obvious over Haffner or Austin in view of Shiba et al. (U.S. Patent No. 4,804,378). Claim 4 requires the tear-resistant laminate have thermoplastic fibers with “a mass divided by length value of at least about 1.5 denier.” Haffner and Austin are applied to meet the limitations of claims 1 and 2, and Shiba is relied on for disclosing the denier value. As discussed above, neither Haffner nor Austin disclose a laminate having an ultimate force to break of at least 3000 g/in. Shiba does not further disclose such a laminate. Accordingly, the combination of Haffner or Austin with Shiba does not teach each and every element of claim 4, and claim 4 is not obvious. Applicant respectfully submits claim 4 as allowable.

*New Claims*

Claim 25 is drawn to a product incorporating a tear-resistant laminate wherein “the tear-resistant laminate has not been further substantially consolidated after assembly.” As discussed above, Haffner and Austin disclose a laminate that has been consolidated or necked after assembly, and it would not be obvious from the disclosures of Haffner and Austin to provide a laminate that has not been necked after assembly. Therefore, claim 25 is not anticipated nor obvious over Haffner and Austin, and is respectfully submitted as allowable. Claims 26-29 depend from claim 25 adding further limitations thereto, and are accordingly submitted as allowable for at least the same reasons as claim 25.

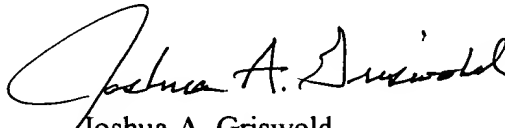
**CONCLUSION**

In view of the above, it is believed that this Application is condition for allowance, and such a Notice was respectfully requested. If there are any outstanding issues, applicant requests the Examiner telephone the Applicant's attorney to resolve such issues.

Examiner is hereby authorized to charge any missing or insufficient fees associated with filing this paper or credit any overpayment to Deposit Account No. 10-0447.

Respectfully submitted,

JENKENS & GILCHRIST,  
A Professional Corporation



Joshua A. Griswold  
Reg. No. 46,310

1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202-2799  
(214) 855-4237  
(214) 855-4300 (fax)